IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2007

CORAM

THE HONOURABLE MR. JUSTICE K.N. BASHA

Crl.O.P.No.3599 of 2006
& Crl.M.P.Nos.865 & 866 of 2006

1. K.B.Kotak,
   S/o.B.B.Kotak,
   Managing Director,
   M/s.Brink's Arya India Private Limited,
   No.81, Dr.Rangachari Road,
   Mylapore, Chennai - 600 004.

2. Col.Pratap Pawar (Retd.)
   S/o.Late G.G.Pawar,
   Regional Manager, Chennai Region,
   M/s.Brink's Arya India Private Limited,
   No.81, Dr.Rangachari Road,
   Mylapore, Chennai - 600 004.

3. M/s.Brink's Arya India Private Limited,
   Represented by its Regional Manager,
   Col.Pratap Pawar (Retd.)
   S/o.Late G.G.Pawar,
   No.81, Dr.Rangachari Road,
   Mylapore, Chennai - 600 004. .. Petitioners/Accused

Vs

State by,
The Deputy Inspector of Labour, Circle V,
33, Venkatnarayana Road,
Nandanam, Madras - 35. .. Respondent/Complainant

* * *

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to C.C.No.5701 of 2005 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, and quash the same.

* * *

For Petitioner : Mr.S.J.Jagadev

For Respondent : Mr.P.Kumaresan
Additional Public Prosecutor

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O R D E R

The petitioners have come forward with this petition seeking for the relief of quashing the proceedings initiated against them in C.C.No.5701 of 2005 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, for the alleged offence under Sections 3 (1)(2) read with Rule 4 of the Motor Transport Workers Act, 1961 (hereinafter referred to as "the Act".)

2. The learned counsel for the petitioners submitted that the first petitioner is the Managing Director, second petitioner is the Regional Manager and the third petitioner is a registered company under the Companies Act and having 41 branches all over India and its head office is situated at Mumbai. The main business activities of the third petitioner company is to provide security for the nationalised and private banks to carry their cash to the respective ATM Branches. It is further submitted that the third petitioner company is also registered under the Tamil Nadu Shops and Establishment Act.

3. The learned counsel for the petitioners submitted that the allegation as per the complaint is that the third petitioner company is not a registered one under the Tamil Nadu Motor Transport Workers Act, 1961 as contemplated under Section 3(1)(2) read with Rule 4 of the Act.

4. The learned counsel for the petitioners mainly contended that the business activities of the third petitioner company would not at all attract the provisions contemplated under the Act and as a matter of fact, the third petitioner company is already registered under the Tamil Nadu Shops and Establishment Act which is more comprehensive in nature and affords suitable protection to the workers. It is submitted by the learned counsel for the petitioners that there is no specific allegation and averment contained in the complaint to attract the provisions of the Act and it is only a printed format filed with certain particulars mechanically without application of mind on the part of the officer who has preferred the complaint against the petitioners. It is further submitted by the learned counsel for the petitioners that nowhere in the complaint it is mentioned about the nature of business activities and mode of their work and it is simply mentioned in the printed format that the third petitioner company is a transport company, without giving further prima facie particulars to establish that the third petitioner company is a transport company.

5. The learned counsel for the petitioners also brought to the notice of this Court that prior to the filing of the complaint, the petitioner received a show-cause notice dated 06.06.2005 and in that show-cause notice it is specifically mentioned that the third petitioner is involved in the business of cash management to the leading banks, viz., ICICI, HSBC, ABN Amro, Oriental Bank of Commerce and Bank of India and during the course of their business activities,

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the petitioners are using the motor vehicles for carrying the cash and handing over the same to the respective ATM Centres of the banks and there were Executives, Junior Executives, ATM operators, drivers, armed guards, Loaders, Retainers with gun etc. were working in the company. It is further submitted that in the show-cause notice it is also mentioned by the authorities to the effect that the petitioners were carrying goods in the vehicles of the company. The learned counsel for the petitioners further brought to the notice of this Court that the petitioners have given a specific reply dated 05.07.2005 to the above said show-cause notice dated 06.06.2005 and wherein it is specifically mentioned by the petitioners that the petitioners were using their vehicles for not carrying any passengers or goods and they were only handing over the cash for the banks and they were mainly engaged in providing security to the cash which is taken to the respective ATM Centres. It is further contended by the learned counsel that in the complaint, there is absolutely no reference about issuance of show-cause notice as well as reply given by the petitioners. The learned counsel for the petitioners further contended that the reading of the provision under Section 2(g) of the Act specifically mentions about carrying passengers or goods and therefore, if at all any complaint to be preferred by the authorities concerned, viz., the respondent herein they have to prima facie satisfy the requirement to the effect that the petitioners were engaged in carrying the goods and the petitioners as admittedly were engaged in providing security and protection for carrying cash to the respective ATM Centres of the Banks and as such the third petitioner company would not come within the purview of the provisions of the Act. The learned counsel for the petitioners has also placed reliance on the decision of the Hon'ble Supreme Court in R.D.Saxena V. Balaram Prasad Sharma in AIR 2002 SC 2912, wherein the Hon'ble Supreme Court has referred about the definition of goods as held by the Hon'ble Apex Court in earlier decisions in para 40 of the judgment holding that if any act does not defined "goods" this Court has to refer only the Sale of Goods Act 1930 and further held that to become goods it must be something which can ordinarily come to the market to be bought and sold and is known to the market as such.

6. The learned counsel for the petitioners also placed reliance on the decision of the Division Bench of the Andhra Pradesh High Court in A.P.State Trade Fedaration V. Labour Commissioner, A.P. in 1992 LAB.L.C. 158 and in that decision it was held that for initiating proceedings for the contravention of the provisions of the Act, the establishments are not only come under the definition of "Motor transport undertaking" as defined under Section 2(g) of the Act, but also the workers employed must also to be motor transport workers as defined under Section 2(h). It is pointed out by the learned counsel for the petitioners that Section 21 (h) of the Act specifically excludes the establishment from the purview of the provisions of the Act if a person is employed in the factory or as defined in the factories act or any such person to whom the provisions of any law for

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the time being in force regulating the conditions of service of persons employed in shops or commercial establishments.

7. It is submitted by the learned counsel for the petitioners that the third petitioner is a registered company under Form 3 of the Tamil Nadu Shops and Establishments Act and the said document is also annexed along with the petition filed for quashing. Therefore, it is submitted by the learned counsel for the petitioners that allowing the proceedings to continue against the petitioners would amount to a clear case of abuse of process of Court and as such the proceedings initiated against the petitioners for the contravention of the above said provisions under the Act is liable to be quashed.

8. Per contra, learned Additional Public Prosecutor contended that the third petitioner company comes well within the purview of the Act. It is pointed out by the learned Additional Public Prosecutor that a detailed counter has also been filed by the respondent herein mentioning about the activities carried on by the third petitioner company. It is submitted by the learned Additional Public Prosecutor that the third petitioner company has employed more than 70 persons and they were working in different fields, viz., Executives, Junior Executives, ATM Operators, Staff Drivers, Armed Guards etc. and further they were carrying cash in their own vehicles to the respective ATM Centres of the banks and as such the business activities of the third petitioner company would squarely come within the purview of the above said Act. It is contended by the learned Additional Public Prosecutor that all the necessary particulars were furnished to the petitioners after the third petitioner company was inspected by the authorities concerned on 30.05.2005 through the show-cause notice dated 06.06.2005 and filing of the complaint is only a follow up action and therefore, the petitioner cannot contend that there are no averments or allegations contained in the complaint. It is submitted by the learned Additional Public Prosecutor that it is for the petitioners to prove their claim only during the course of full-fledged trial and they have not made out any prima facie ground for quashing the proceedings.

9. I have carefully considered the rival contentions put forward by either side and also perused the impugned complaint as well as other materials available on record.

10. A perusal of the complaint discloses that the sum and substance of the allegation is to the effect that the third petitioner company is not a registered one as contemplated under the provisions of the Act and thereby contravened the provisions under Section 3(1)(2) read with rule 4 of the Act. It is pertinent to note that the third petitioner company is not a motor transport company and the same is very much apparent on the basis of the materials available on record.

11. Before proceeding to consider the contentions put forward by

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both sides, it is appropriate to refer the relevant provisions involved in this matter.

12. Section 2 (g) of the Act which reads hereunder :

> Section 2(g) : "Motor Transport Undertaking means a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward, and includes a private carrier."

13. Section 2 (h) of the Act which reads hereunder :

> "Section (h) 'Motor Transport Worker' means a person who is employed in a motor transport undertaking directly or through an agency whether for wages or not, to work in a professional capacity on a transport vehicle or to attend to duties in connection with the arrival, departure, lading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line-checking staff, booking clerk, cash clerk, depot clerk, timekeeper, watchman or attendant but except in Section 8 DOES NOT INCLUDE -
>
> (i) Any such person who is employed in a factory as defined in the Factories Act, 1948 (63 of 1948) ;
>
> (ii) Any such person to whom the provision of any lay for the time being in force regulating the conditions of service of persons employed in shops or commercial establishments apply."

14. Section 3(1) of the Act reads hereunder :

> Section 3 - Registration of Motor Transport undertaking: (1) Every employer of a Motor Transport Undertaking to which this Act applies shall have the undertaking registered under this Act."

15. The reading of the provision of Section 2(g) of the Act clearly shows that in order to bring any shops and establishments within the purview of this Act, the authority concerned should prima facie establish two fundamental requirements viz., (i) establishment should be a motor transport undertaking and (ii) such undertaking should involve in carrying passengers or goods or both.

16. At the outset it is to be stated that the perusal of the complaint discloses that there is not a whisper about the business activities of the third petitioner company and the complaint itself is in the printed format with certain blanks which were filled up and even

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in such complaint, the fundamental ingredients to show the contravention of Section 3(1)(2) of the Act and Rule 4 of the Rules are not at all made out. There is not a whisper to the effect that the third petitioner company is involved in transporting the goods and the materials available on record discloses that the petitioners were not at all transporting goods and they were providing security and protection to the leading banks to take their cash to the respective ATM Centres. Therefore, in my considered view the complainant has not even able to establish a prima facie case for the alleged contravention under the Act. The learned Additional Public Prosecutor took enormous pain to contend that the allegations are made out specifically in the show-cause notice dated 06.06.2005 wherein there was specifically mentioned about the business activities carried on by the third petitioner company. A perusal of the show-cause notice dated 06.06.2005 shows that the third petitioner company is involved in ATM Cash Management and used their vehicles with providing their security and protection to the Banks for taking their cash to the respective ATM Centres. It is also seen that the third petitioner was using 17 vehicles for that purpose. It is also pertinent to note that, as already stated, the respondent made an attempt to bring the third petitioner company within the purview of the provisions of the Act by adding through interpolations to the show-cause notice dated 06.06.2005 mentioning that the petitioners were transporting goods.

17. On the other hand, the petitioners in their reply to the said show-cause notice dated 06.06.2005 made it very clear that they were not transporting or carrying any passengers or goods and they were only handing over cash for the banks for filling into their ATM Centres and their workers were engaged in providing security to the cash which is moved by road to the respective ATM Centres. The undisputed fact remains that there is not a whisper about the show-cause notice or the reply given to the petitioner's in the complaint. The averment contained in the show-cause notice is in favour of the petitioners herein as their contention to the effect that they were mainly involved in providing security and protection to the cash movement to the respective ATM Centres of the bank as admitted by the respondent.

18. Apart from the above illegalities it is also pertinent to note as rightly pointed out by the learned counsel for the petitioners, Section 2(h) of the Act specifically excludes any establishment which was registered under the Factories Act or under the Shops and Establishment Act. In this matter, the petitioners have also produced their registered certificate to show that the third petitioner company is a registered one under the Shops and Establishments Act and that particular fact is also not disputed by the prosecution.

19. The Hon'ble Apex Court in R.D.Saxena v. Balaram Prasad Sharma reported in AIR 2000 SC 2912 has held by placing reliance on its earlier decisions as follows :

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> 40. This Court in Union of India V. Delhi Cloth and General Mills Co. Ltd., AI4 1963 SC 791, held that to become "goods" an article must be something which can ordinarily come to the markets to be bought and sold. In Collector of Central Excise, Calcutta-I v. M/s.Eastend Paper Industries Ltd., (1989) 4 SCC 244, it was stated that goods are understood to mean as identifiable articles known in the markets as goods and marketed and marketable in the market as such. Where the Act does not define "goods", the Legislature should be presumed to have used that word in its ordinary dictionary meaning i.e. to become goods it must be something which can ordinarily come to the market to be bought and sold and is known to the market as such."

In view of the above well settled principle of law laid down by the Hon'ble Apex Court, it is crystal clear that by no stretch of imagination it can be stated that carrying of cash in the vehicles of the third petitioner company by providing security to the Banks for carrying the same to their respective ATM Centres would come within the purview of the said Act.

20. Therefore, in view of the above reasons, this court is of the considered view that the proceedings initiated by the respondent/complainant against the petitioners is liable to be quashed on two grounds viz., (i) lack of specific averments and allegations in the complaint as pointed out earlier and (ii) there is no prima facie ground or material for attracting the provisions of the Act in respect of the third petitioner company herein. Accordingly, the proceedings pending in C.C.No.5701 of 2005 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed.

21. This petition is ordered accordingly. Consequently, connected Miscellaneous Petitions are closed.

सत्यमेव जयते

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The XI Metropolitan Magistrate, Saidapet, Chennai.

2.-do- Through The Chief Metropolitan Magistrate,Egmore, Chennai.

3. The Deputy Inspector of Labour, Circle V,
   33, Venkatnarayana Road,
   Nandanam, Madras - 600 035.

4. The Public Prosecutor (Pondicherry),
   High Court, Madras.

NSM (CO)
km/11.12.

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